IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.687 OF 2007

Motiram Ramchandra Patil & Anr. ..Appellants

Versus

Ashok Shankar Mhatre & Anr. ..Respondents

Mr.A.S.Khandeparkar h/for Anilkumar Joshi for the appellants.

Mr.Sandesh D.Patil for respondent nos.1 & 2.

Coram : D.B.BHOSALE,J

DATE : 26.09.2007.

PC

1. This appeal by the original plaintiff challenges concurrent findings of facts recorded by the Courts below, by which a suit instituted for declaration that they are the owners of the suit property has been dismissed.

2. Learned Counsel for the appellants submits that an issue as to whether the suit property was ancestral property of the plaintiffs or it was self acquired property of their father has not been considered by the Court below at all. Ramchandra Patil, the father of the plaintiffs, had admittedly sold the suit property to the defendants in 1947 when plaintiff no.1 was hardly 3 years old and plaintiff no.2 was not even born. Plaintiff no.1 attained age of majority sometime in 1961. The plaintiffs have instituted the present suit in 1998 without seeking declaration that the sale

transaction between their father and the defendants is either not binding on them or was not for legal necessity. Such contention had not even been urged by the plaintiffs before the Courts below. Moreover, the Courts below after having considered the entire evidence on record, have held that the plaintiffs have proved their title and possession over the suit property. The case set up by the plaintiffs that they are in possession and their possession is hostile with knowledge to the defendants has been rejected by the Courts below. Considering that the findings of facts are entirely based on the evidence on record, no interference by this Court in the present appeal is called for. No substantial question of law is raised. Second Appeal accordingly, stands dismissed.

(D.B.BHOSALE,J)